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SUBJECT: SRI LANKA: DELIVERING THE "WAR CRIMES" REPORT
TO THE GSL

¶1. (U) This is an action request; see paragraph 5.

¶2. (U) Background: The Department of State will deliver to Congress on the afternoon of October 21 a report prepared pursuant to the Joint Explanatory Statement accompanying the Supplemental Appropriations Act, 2009 (P.L. 111-32), which directed the Secretary of State to submit a report "detailing incidents during the recent humanitarian conflict in Sri Lanka that may constitute violations of international humanitarian law or crimes against humanity, and, to the extent practicable, identifying the parties responsible."

¶3. (U) The alleged incidents set forth in the report occurred in the context of the final months -- January-May 2009 -- of an armed conflict between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE), which has been listed as a terrorist organization by the United States since 1997. The report does not provide, nor is it intended to be, a comprehensive portrayal of the conflict. While the report's background section includes an overview of the relevant international law that could be a useful framework for reviewing the conduct alleged in the report, the report does not reach legal conclusions as to whether the incidents described in the report actually constitute violations of international humanitarian law, crimes against humanity or other violations of international law. Nor does it reach conclusions concerning whether the alleged incidents actually occurred. An executive summary, additional background on the context of the conflict, the legal framework, the methodology, and limitations to collecting and corroborating information are included in the report.

¶4. (U) Hard copies of this report will be delivered to Congress on the afternoon of Wednesday, October 21, and the report will be posted on the State Department S/WCI website on the morning (EDT) of October 22. SCA A/S Blake and S/WCI Ambassador Rapp will hand a copy of the report to the Sri Lankan Ambassador to the United States on October 21, following its delivery to Congress.

ACTION REQUEST

15. (U) Ambassador is instructed to deliver to the Foreign Ministry, and to other GSL officials as appropriate, a copy of the report, drawing on the talking points below. These points may also be used publicly. Additional press guidance is included in paragraph 6. Info addressees are authorized to preview the report's release and/or to deliver a copy of the report, following its public release in Washington, to host-country officials. Info addressees may utilize the same talking points below, as well as the additional points provided, and the cleared press guidance as appropriate with media and host-country interlocutors.

- The Department of State delivered on October 21 to the U.S. Congress a report prepared by the Department of State at the direction of Congress "detailing incidents during the recent conflict in Sri Lanka that may constitute violations of international humanitarian law or crimes against humanity, and, to the extent practicable, identifying the parties responsible."

- Congress cares very deeply about this issue. It is also important to the Obama Administration.

- The report does not provide, nor is it intended to be, a comprehensive portrayal of the conflict.

- The report compiles incidents alleged to have transpired in the final stages -- from January to May 2009 -- of the conflict against the terrorist group LTTE, which may constitute violations of international humanitarian law or crimes against humanity and related harms. The incidents identified in the report include those alleged to have been carried out by the LTTE, as well as by Sri Lankan government forces.

- The report also provides an overview of relevant international law that may be a useful foundation for reviewing the conduct alleged in the report, but the report does not reach any legal conclusions as to whether the incidents described in the report actually constitute violations of international humanitarian law, crimes against humanity or violations of international law.

- The United States recognizes Sri Lanka's inherent right to defend itself from armed attacks, including those by non-state actors such as terrorist groups. The United States also expects states and non-state actors to comply with their international legal obligations concerning, among other things, the treatment of civilians not taking part in hostilities, and the principles of distinction and proportionality.

- The State Department consulted a wide range of primary and secondary sources in gathering information for this report. Information concerning the majority of incidents cited in the report originated in first-hand accounts communicated by persons from within the government-declared No Fire Zones and locations close to the fighting.

- The report explains that there were a number of limitations on the State Department's ability to collect and corroborate information, including limited access to the conflict zone and to potential eyewitnesses to alleged incidents. These limitations are discussed in the report's background section.

- We continue to urge the Government of Sri Lanka to grant the international community full access to the northern region, as the UN High Commissioner of Human Rights has requested, to better understand the facts on the ground in Sri Lanka, and to ensure that human rights are fully protected and that ongoing humanitarian needs are being fully met.

- At the same time, we continue to urge you to release without delay the over 250,000 internally displaced persons (IDPs) who remain in IDP camps and facilitate their return and reintegration.
- Accountability is an essential component of national reconciliation. There is as well the urgent need to release and facilitate the return of internally displaced persons, and to take meaningful steps on political reconciliation, such as implementing constitutional provisions on political power-sharing and devolution and curtailing human rights abuses.
- We look to the Government to identify a mechanism and initiate an impartial and effective process for establishing accountability, including, where appropriate, investigating allegations of violations that may have occurred during the final stages of the conflict and holding accountable any individuals responsible for such violations.
- There are a number of domestic and international models of accountability mechanisms that the government could draw from in creating its own process that would promote reconciliation and healing. We hope the government will pursue a dialogue with a broad range of representatives of Sri Lanka's Tamil community to determine the appropriate mechanism.
- Pursuing accountability will not be easy. It is understandable that, after 26 years of violent struggle against the LTTE, many in Sri Lanka will want to simply move on. But if we hope to achieve the peaceful and prosperous future that we all want for Sri Lanka, the government must do what it can to help account for the suffering of the past. Genuine national reconciliation demands it.

ADDITIONAL POINTS FOR INFO ADDRESSEES:

- Accountability is a critical component of national reconciliation. It is important that the international community speak with one voice on the importance of accountability.
- We recognize that it would be a challenge for any sitting government to pursue an accountability process for alleged large-scale violations of international humanitarian law or other violations that may have been committed during its tenure.
- In pushing for accountability, we do not intend to lose our focus on urging the Government of Sri Lanka to release and facilitate the return of the nearly 250,000 internally displaced persons (IDPs) who remain in IDP camps and the pressing need for the government to take meaningful steps on political reconciliation, including implementing constitutional provisions on devolution and political power sharing, and ending human rights abuses.

ADDITIONAL PRESS GUIDANCE

16. (U) The following guidance has also been cleared for use with Sri Lankan media and may be used with government interlocutors:

Q: How could you write/prepare this report without consulting the Government of Sri Lanka?

- State Department officials discussed the parameters of the report with senior Government of Sri Lanka officials, including the Foreign Minister and the Ambassador to the United States. We have also encouraged the Sri Lankan government to investigate allegations of possible violations of international humanitarian law and other violations and hold

accountable those responsible.

Q: How can you verify the claims in the document?

- The report does not attempt to verify claims of violations. A number of factors limited the ability of the Department of State to provide conclusive information as to incidents that may constitute violations of international humanitarian law and crimes against humanity, including restricted access to the conflict zone and screening points.

- Due to these limitations, the report does not reach any legal conclusions as to whether the incidents described in the report actually constitute violations of international humanitarian law, crimes against humanity or other violations of international law. The report also does not reach conclusions regarding factual claims.

- While we cannot independently verify many of the incidents covered in the report, we did not include reports that did not come from credible sources.

Q: What right does the United States have to do such a report on an internal matter?

- Congress specifically tasked the State Department with compiling the available information so that it could learn more about what occurred during the last few months of the conflict and that is what we have done.

- The United States believes that it is important to have more information available about the recent conflict in Sri Lanka.

- Potential violations of international law are not solely an internal matter, although international law recognizes that governments have primary responsibility for ensuring that human rights are respected in their own territory and for addressing violations that may have occurred.

Q: What do you want the Sri Lankan Government to do with this information?

- The United States takes seriously allegations of violations of international humanitarian law and human rights law. Moreover, accountability is an essential component of national reconciliation.

- We expect the Government of Sri Lanka to consult with a broad range of representatives of Sri Lanka's Tamil community to identify a mechanism and initiate an impartial and effective process for establishing accountability for such incidents, including, as appropriate, investigating allegations of violations of international law that may have occurred during the final stages of the conflict with the LTTE and holding accountable any individuals responsible for such violations.

- There are a number of domestic and international models of accountability mechanisms that the government could draw from in creating its own process that would promote reconciliation and healing. We hope the government will pursue a dialogue with a broad range of representatives of Sri Lanka's Tamil community to determine the appropriate mechanism.

Q: Would the US support an international inquiry on war crimes?

- International law places primary responsibility on the state to ensure that those responsible for violations of international humanitarian law and human rights law in its territory are held accountable, but recognizes the appropriateness of international mechanisms where a

state is unable or unwilling to act. We are looking to the Sri Lankan government to identify a credible and appropriate mechanism for initiating such a process, and we stand ready to assist it.

- In the meantime, we will support continued information gathering and fact-finding concerning alleged incidents that occurred during the last stages of the recent conflict.

- The U.S. Government continues to urge the Government of Sri Lanka to grant the international community full access to the Northern region, as the UN High Commissioner of Human Rights has requested, to better understand the facts on the ground in Sri Lanka, and to help ensure that human rights are being protected and that ongoing humanitarian needs are being met.

Q: Why won't you make your sources public?

- Some organizations are identified by name if they have publicly released specific allegations while others are identified in more general terms to preserve confidentiality.

Q: How can the Government respond to the accusations if it does not know who its accusers are?

- The report does not consist of accusations. It is a compilation of information regarding alleged conduct of both parties to the conflict that adds to our understanding of what occurred during the final stages of the conflict.

Q: Did the Sri Lankan diaspora, especially the Tamil diaspora, contribute to or otherwise influence this report?

- No.

- Outside the context of this report, State Department officials have discussed regularly the current humanitarian situation and prospects for political reconciliation in Sri Lanka with representatives of U.S.-based organizations representing members of the Tamil, Sinhalese, and Muslim diaspora, and other Sri Lankan-American groups.

Q: Was anyone from Sri Lanka sent to the United States to give testimony for this report?

- No. This report is not the result of a legal investigation nor does it reach factual or legal conclusions.

Q: How was the information in the report gathered?

- The State Department consulted a wide range of primary and secondary sources in gathering information for this report. These sources include internal USG reporting and subject matter experts, primarily from the State Department and the United States Agency for International Development (USAID); foreign governments; international organizations; media reports; non-governmental organizations; and eyewitnesses.

- Information concerning the majority of incidents cited in this report originated in first-hand accounts communicated by persons from within the government-declared No Fire Zones (NFZs) and other locations close to the fighting.

- A number of factors limited the ability of the Department of State to provide conclusive information as to incidents that may constitute violations of IHL and crimes against humanity, including restricted access to the conflict zone, screening points, and eyewitnesses.

Q: Was the Embassy in Colombo involved in this process?

- Yes.

Q: Who wrote the report?

- In the explanatory statement accompanying the Supplemental Appropriation Act, 2009 (P.L. 111-32) enacted in June, Congress requested that the Secretary of State submit this report. The report is a State Department product.

Q: What action is the USG prepared to take if the Government refuses to act on the report?

- Accountability is an essential component of national reconciliation. We expect the Government of Sri Lanka to identify a mechanism and initiate an impartial and effective process for establishing accountability, including investigating allegations of violations of international law that may have occurred during the final stages of the conflict with the LTTE and holding accountable any individuals responsible for such violations.

- The U.S. Government continues to urge the Government of Sri Lanka to grant the international community full access to the Northern region, as the UN High Commissioner of Human Rights has requested, to understand better the facts on the ground in Sri Lanka, and to help ensure that human rights are being protected and that on-going humanitarian needs are being met. At the same time, we continue to strongly urge the GSL to allow full freedom of movement for all its citizens including the over 250,000 detained in IDP camps.

- We will support continued information gathering and fact-finding concerning the last stages of the recent conflict.

17. (U) Please convey GSL and other responses to Sri Lanka/Maldives desk officer, Anthony Renzulli, RenzulliAF@state.sgov.gov, (202)647-1078.
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